IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.9228/02
Smt. Krishna Kejriwal Vs. State of Raj. & Ors.
Date of Order :: 13th March, 2007

Hon'ble Mr. Justice Mohammad Rafiq

REPORTABLE

Shri S.R. Bajwa, Sr. Adv. with
Shri V.R. Bajwa for petitioner.
Shri B.S. Chhaba, Dy. Government Advocate
Shri Anant Bhandari for respondent no.4
Shri Amit Singh Shekhawat for respondent no.5
Shri S.N. Kumawat for respondent no.6&7.

This writ petition has been filed with the prayer that the Commissioner, Jaipur Development Authority be directed to take immediate steps to flush out the trespassers who have been unlawfully retaining possession of the land belonging to Krishna Nagar Extension Scheme and restore possession thereof to 26 allottees of Krishna Nagar Extension

Scheme and make provision for roads, parks and other facilities on 34% area of Krishna Nagar Extension Scheme which vests in the Jaipur Development Authority. A further prayer has been made that Director General of Police, Rajasthan be required to evict the trespassers by use of the police force.

The factual matrix of the case is that the petitioner entered into an agreement to sale with one Colonel Rajendra Singh some time in the year 1975 with regard to land measuring approximately 3.33 acres. According to the petitioner, possession of the said land was handed over by the said Colonel Rajendra Singh to the petitioner. The petitioner entered into agreement with Jai Chamunda Grah Nirman Sahakari Samiti

Ltd. (for short `Chamunda Samiti') for development of such land into a colony. Colonel Rajendra Singh however had a change of mind later and wanted to back out from the agreement. When he delayed execution of the sale deed, the petitioner had to file a Civil Suit for specific performance which eventually culminated into passing of a compromise decree and execution of the sale deed in favour of the petitioner by him on 24.9.79. It was thereafter that an agreement was entered into petitioner and the said Chamunda Samiti who later approached the Jaipur Development Authority with the proposed lay out plan of 26 residential plots with the name of Krishna Nagar Extension Scheme. The lay out plan was approved by the JDA on

11.7.84. The Samiti has given these 26 plots to the persons named by the petitioner who were all her family members, close relatives and friends. In course of time, the conversion charges were also deposited on behalf of the 26 allottees. The Samiti submitted a scheme sponsored by it before the JDA and the JDA later published a list of various schemes in the shape of booklet sponsored by the said Samiti. At page 7 of such booklet, reference has been made to 26 allottees in Krishna Nagar Extension Scheme. The petitioner deputed one Sanwar Mal Agarwal to look after such plots because she generally resides in Calcutta. But then, Colonel Rajendra Singh again prompted by sheer greed sponsored Madhav Nagar Grah Nigam Sahakri

Samiti Ltd. (in short `Madhav Samiti') and executed another agreement to sale in their favour.

Further case of the petitioner is that subsequent events revealed that Madhav Samiti forged some documents in order to create an illusion that a scheme in the name of Rajendra Nagar Extension has been sponsored in relation to the same land which was already unde Krishna Nagar Extension Scheme. A fake list of 26 plots holders with fictitious names was proclaimed by Madhav Samiti but no such scheme was ever approved by the JDA. The JDA in early 90'es initiated a derive against the land-grabbers. Number of criminal cases were registered in such matters. The caretaker of petitioner Shri Sanwar Mal Agarwal received an

information on 12.9.92 that some unruly mob had trespassed into the land of Krishna Nagar Extension Scheme and these armed persons threatened him with dire consequences. They were claiming that this land belonged to Madhav Samiti and they did so in connivance with the local police. When Shri Sanwar Mal Agarwal went to Police Station Vaishali Nagar and reported the incidence to Ashok Kumar Trivedi the then SHO, he turned a deaf ear. He then went to Superintendent of Police, Jaipur who summoned the SHO and it was only thereafter that the SHO accompanied Sanwar Mal Agarwal to Police Station, Vaishali Nagar. No police party was dispatched to the site by him. It later transpired that SHO had the direction of Shri J.P. Mishra the then

DIG of Police, Jaipur Range who had assured the land- grabbers of protection for raising the boundary wall. Sanwar Mal Agarwal also reported the incident to Commissioner JDA, Jaipur and submitted number of written representations to various government functionaries. The petitioner was then advised to proceed u/s. 145 Cr.P.C. Accordingly she filed an application on 11.11.92 before Additional District Magistrate, Jaipur City who on 19.4.93 passed a preliminary order. One of the allottees of the Madhav Samiti challenged the said preliminary order by filing the revision petition which was allowed by the Additional Sessions Judge on 7.5.94 holding that Section 145/146 Cr.P.C. could not be invoked. The petitioner and other allottees had filed

Civil Suits for declaration, permanent injunction and delivery of possession in the civil Courts. These suits were dismissed in 1997 on the basis of objections taken by the defendants in general and Madhav Samiti in particular under Order 7 Rule 11(D) on the premise that dispute was covered under the provisions of Section 75/137 of the Rajasthan Co-operative Societies Act, 1965. They then filed Regular First Appeals. The appeals are still pending. It is against the back drop of these facts that the present petition has been filed by the petitioner seeking a writ of mandamus on the lines referred to above.

The writ petition has been contested by the respondent no.1 and 2, respondent no.4-JDA and respondent nos.6 and 7

Madhav Samiti and one of its allottees.

The Government in the reply while opposing the writ petition has submitted that the FIR lodged by Sanwar Mal Agarwal on 12.9.92 in regard to alleged trespass of the disputed land on investigation was found baseless which culminated into giving of final report by the police. Documents submitted by the complainant in that FIR were contradictory to each other. During investigation it transpired that the possession of the land had already been handedover by Colonel Rajendra Kumar to Madhav Samiti way back in the year 1974 whereas agreement allegedly entered into between the petitioner and Colonel Rajendra Singh was dated 18.4.1975. The said Samiti sold the land by dividing it

into plots of various sizes to its members. Colonel Rajendra Singh has also in his statement admitted having entered into agreement with Madhav Samiti. According to such agreement, the JDA approved the lay out plan of Rajendra Nagar Extension Scheme, therefore, there was no case for offence under Section 447 of the IPC and FR No.303/92 was rightly given on 30.9.92 because the dispute was purely of civil nature.

The JDA in its reply has denied having approved either Krishna Nagar Extension Scheme or even Rajendra Nagar Extension Scheme. It has been stated that when the petitioner has filed suit and thereafter Regular First Appeal before this Court, the writ petition is not maintainable. The Madhav Samiti has also

raised same objection and has stated that S.B. Civil First Appeal No.87/97 and S.B. Civil First Appeal No.100/97 both titled Harsh Vardhan Kejriwal Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd. & Ors. are already pending before this Court and therefore this writ petition is not maintainable. Harsh Vardhan Kejriwal, it may be, is the son of the petitioner Smt. Krishna Kejriwal. It is stated that neither the Civil Court in the Civil Suit filed by the petitioner nor the criminal court under section 146 and 147 Cr.P.C. proceedings has found any case in favour of the petitioner. While the petitioner has alleged that she was dispossessed from the property on 12.2.92 but the present writ petition has been filed after inordinate delay of 10 years in

2002. It has been alleged that the agreement dated 28.4.1975 produced by the petitioner is false and concocted. Besides, she having transferred the said land to the Chamunda Samiti under an agreement to sale cannot maintain the present writ petition. Even otherwise, it is not maintainable because none of the 26 plots stand in the name of the petitioner. The alleged sale deed executed on 16.12.78 and supplementary agreement dated 20.10.79 are also based on concocted story. It was therefore prayed that the writ petition be dismissed.

I have heard Shri S.R. Bajwa, learned counsel for the petitioner, Shri B.S. Chhaba, learned Dy. Government Advocate, Shri Anant Bhandari, learned counsel for respondent no.4, Shri Amit Singh

Shekhawat, learned counsel for respondent no.5 and Shri S.N. Kumawat, learned counsel for respondent no.6 and 7 and scanned the material on record.

Shri S.R. Bajwa, the learned counsel for the petitioner has argued that the allottees of Chamunda Samiti were illegally dispossessed on 12.9.92 with the help of the local police. In fact the then SHO Shri Ashok Kumar Trivedi and then with Dy Inspector General of Police Shri J.P. Mishra were actively protecting the land-grabbers. The respondents nos. 2, 3, 6, 7 & 8 have no semblance of right to remain in possession of the land. He argued that when a person who has been enjoying peaceful possession is dispossessed by act of criminal trespass, the statutory authorities are duty bound

to restore back the possession. Regardless of title or otherwise, when such glaring acts appears to the notice of this Court, the Court should rather feel obliged to direct restoration of possession particularly when the facts are so glaring that the Court ought to come to the rescue of those who are oppressed and are in a disadvantageous position. Shri Bajwa submitted that alternative remedy should not be used as a weapon of defence by criminals who thrive on blatant aggression and forceful dispossession. It should be treated as sacrosanct duty of Court to come to the aid of a litigant who has been victim of continued oppression. He argued that neither the remedy u/s. 145 Cr.P.C. nor the remedy in the form of Civil Suits nor

the filing of First Information Report could grant the desired relief to allottees of Krishna Nagar Extension Scheme. Whenever the Court confronts itself with naked aggression spreading reign terror where rule of law becomes first casualty, it should not wait for the civil proceedings to culminate into judicial decree or for the criminal prosecution to take its natural course. The court should instantly grant relief to the victim of naked operation of restoring his possession. Shri Bajwa in support of his arguments relied on the judgment of Co-ordinate Bench of this Court in M/s. Chandra & Co. Vs. State of Raj. & Ors., AIR 1981 (Raj.) 217, the Division Bench Judgment of Delhi High Court and Smt. Anju Devi Vs. Commissioner

of Police & Ors., 1994(2) Crimes 691 and another unreported judgment of Division Bench of the same High Court in Civil Writ Petition No.779/94 Vijay Khanna and Anr. Vs. Union of India & Ors. decided on 5.11.1998.

On the other hand Shri S.N. Kumawat, the learned counsel for respondent nos.6 and 7 argued that the dispute raised in the present case is purely of civil nature and already the petitioner has approached not only the Civil Court but also the Criminal Court. He submitted that the FIR about the alleged criminal trespass made by the petitioner over the land in dispute was on thorough investigation found to be false and eventually the police has given the final report therein. He also referred to the

judgment of the Additional District Judge no.4, Jaipur City, Jaipur in which the suits filed by the allottees of the Chamunda Samiti including that of the son and other relatives of the petitioners were dismissed by the said Court under its judgment and decree dated 20.1.97. Shri Kumawat also referred to the judgment dated 7.5.94 passed by Additional Sessions Judge, Jaipur in revision petition filed by one Ratan Singh Singh Chandawat, one of the allottees of the Madhav Samiti against the order dated 19.4.93 passed by the Additional District Magistrate under Section 145 and 146 of the Code of Criminal Procedure and submitted that the said order was set aside by the Court with liberty to the allottees of the

Chamunda Samiti to approach the Civil Court. They later approached the Civil Court and when such suit were dismissed, they have filed first appeals before this Court. He therefore submitted that the present writ petition would be simply not maintainable, more particularly when the first appeals against the aforesaid judgment / decree passed by the Civil Court are also pending consideration with this Court. Shri Kumawat also argued that the writ petitions at the instance of the petitioner would not be maintainable also because none of the 26 plots has been allotted in her favour even as per the booklet published by the JDA. Shri Kumawat argued that the matter involves disputed questions of fact and the suits for the same relief having

already been filed and dismissed and the appeals thereagainst are presently pending before this Court, therefore, the writ petition in view of these facts is liable to be dismissed being not maintainable.

The learned Dy. Government Adcovate Shri B.S. Chhaba and Shri Anant Bhandari, the learned counsel for the respondent JDA also opposed the writ petition and argued that writ petition is not maintainable because the matter involves several disputed questions of fact and when the Civil First Appeal filed against the judgment of the Civil Court, involving more or less same issues are pending, the writ petitions cannot be entertained. They also prayed that the writ petition be dismissed as being

misconceived and not maintainable.

I have given by thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record. A critical analysis of the material on record and the judgments passed by the Courts in the Civil Suit and the Criminal Revision referred to above would reveal that the substance of the dispute between the parties is that both of them are claiming title over the same land. The petitioner claims to have gained such title by virtue of agreement to sale executed in his favour by Colonel Rajendra Singh. He then claims to have entered with an agreement with Chamunda Samiti for sponsoring a residential colony on such land. But on the other

hand Madhav Samiti also claims to have entered into agreement with Colonel Rajendra Singh sometime in the year 1974 and therefore according to them date of their agreement was even prior to the date of the agreement with the petitioner. A perusal of the judgment of the trial court which is subject matter of challenge in S.B. Civil First Appeal would reveal that civil suits were filed by allottees of Chamunda Samiti for whose benefit the present writ petition has been filed. Such suits were filed by Harshvardhan Kejriwal, who is son of the petitioner, Kamla Devi Agarwal, Pradeep Pant, Sushila Devi, Namita Sarkhel, Ravi Kant Modi, Ashok Kumar Bhatia, Rajni Bhatia, Nirmal Kumar Khetan, Rajyeshree Khandelwal, Veena Kejriwal, Prabhawal,

Gobind Prasad Bhartiya, Geeta Devi Modi, Satya Narain Khetan and Smt. Parmeshwari Devi Bhartiya. The examination of the judgments passed in these cases shows that not only Colonel Rajendra Singh but Madhav Samiti and Chamunda Samiti both were impleaded as defendants therein, apart from the allottees of Madhav Samiti. The dispute raised in those civil suits was thus essentially similar to the controversy raised in the present writ petition and in fact the same. When the petitioner filed first information report alleging her forceful ejectment from the land in dispute and criminal trespass by the representative of Madhav Samiti, the police submitted a final report by not believing the version of the petitioner and then the final report was accepted by

the Court too. No steps were taken by the petitioner thereafter to pursue her remedy in the criminal court. Besides, initially when the provisions of Section 145 and 146 of the Code of Criminal Procedure were invoked by order of the Additional District Magistrate, one of the allottees of the Madhav Samiti challenged that order before the Additional District Judge, Jaipur who set aside the same and that matter also attained finality. The judgments relied upon by the learned counsel for the petitioner in M/s. Chandra & Co. and Ors, Smt. Anju Devi and Vijay Khanna (supra) turned out on their own peculiar facts and cannot be held applicable to the facts of the present case. M/s. Chandra and Co. was a case where the government

on expiry of term of the lease forcibly dispossessed the petitioner from the land leased out to them even though the proceedings before the Estate Officer under the provisions of Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1956 were still pending. In those facts, the writ petition was held maintainable and direction was given for restoration of the possession. The judgment of Delhi High Court in Smt. Anju Devi (Supra) was delivered in a case where the Court on the facts of that case found that the petitioner was illegally dispossessed as a result of connivance and collusion between the respondents and the police and therefore directed the restoration of her possession. In the case of Vijay Khanna and Anr. also the

Delhi High Court issued a similar writ of mandamus on the basis of the material available before it which included the declaration made by the Income Tax Authority of the petitioner having incurred the cost of Rs.28,00,000/- in construction of the house, apart from price of the land purchase of which was made in the year 1994 and which considerably appreciated when the petitioner had been illegally dispossessed. The High Court also took into consideration the evidence collected by the Central Bureau of Investigation in the course of investigation which found the allegations against the respondents proved and filed charge sheet against them. In the present case, however the situation is entirely different where the

petitioners have not only lost in Civil Court but also in the criminal case lodged by them in which the police has submitted final report.

The Hon'ble Supreme Court in a recently delivered judgment in P.R. Murlidharan & Ors. Vs. Swami Dharmananda Theertha Padar & Ors., (2006) 4 SCC 501 had the occasion to consider somewhat similar issue where the writ petition was filed before the Kerala High Court praying for police protection to the life and properties of the petitioner on the premise that he was entitled to hold the office of Madathipathi. In that case too the petitioner had earlier filed a Civil Suit which was dismissed and thereafter he filed another Civil Suit which was pending. The Supreme Court held that the

question was contentious one and determination of such disputed question of fact was beyond the scope and purport of the jurisdiction of the High Court while exercising the power under Article 226 of the Constitution of India and therefore the High Court committed an error of law in entertaining the writ petition. The observations to this effect made in para 12 of the report are worth quoting:-

> “It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an office and discharging certain

functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which were beyond the scope and purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact. Respondent 1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or the other, failed to do so. The provisions of Order 9 Rule 9 of the Code of Civil Procedure stare on his

face. He, therefore, could not have filed a writ petition for getting the selfsame issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the

documents alone, but it required adduction of oral evidence as well. Such evidence was necessary for the purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event, the impleading applicant herein, as noticed hereinabove, has raised a contention that he alone was ordained to hold the said office as per the bye-laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by the High Court in a writ

proceeding.”

In the facts and circumstances of this case, therefore, this Court in exercise of its writ jurisdiction under Article 226 cannot entertain a petition which involves complex nature of disputed questions of fact and generally relegate the litigants to the remedy of Civil Court where that Court by mechanism of evidence is better placed to arrive at particular finding on such seriously disputed questions of fact. Already when this controversy has been taken to Civil Court in a civil suit and the Civil Court has dismissed the same, particularly when such judgments and decrees passed by the Civil Court have been separately assailed before this Court by way of filing Civil Regular First Appeals, the remedy of writ

petition under Article 226 for the kind of relief prayed for would not be available to the petitioner.

In view of what has been discussed above, the present writ petition is wholly misconceived and therefore liable to be dismissed.

The writ petition is accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/-